

Appl. No. : 10/765,573
Filed : January 27, 2004

REMARKS

Applicant respectfully requests reconsideration of the above-identified application in view of the amendments set forth above and the comments set forth below.

Claims 13-15 and 19 Are Patentable Over Yoshida et al. and Nanami

Claims 13-15 and 19 have been rejected as unpatentable over Yoshida et al. in view of Nanami. Applicant respectfully disagrees. While Applicant traverses the basis for the rejection, Applicant also submits that Yoshida et al. is not prior art to the present application.

Yoshida et al. has an effective filing date of February 23, 2001. The present application was originally filed in Japan on November 20, 2000 and subsequently filed in the United States on November 20, 2001. As provided in MPEP 201.15, this situation requires an analysis of the merits of the claim to priority of the present application. Applicant has enclosed a certified English translation of the priority document and Applicant submits that Claims 13-15 and 19 are entitled to the November 20, 2000 priority date. Accordingly, Yoshida et al. is not properly considered prior art.

Reconsideration and withdrawal of the rejection of Claims 13-15 and 19 are respectfully requested.

The Double Patenting Rejection Is Improper

Claims 16-18 and 20 have been rejected on the ground of nonstatutory obviousness-type double patenting. The rejection was based on the combination of Yoshida et al. in view of Nanami and further in view of Claims 1, 7 and 14-19 of U.S. Patent No. 6,681,750. Applicant submits that a proper double patenting rejection has not been established.

As an initial matter, Yoshida et al. is not properly considered prior art and, therefore, cannot be used in the double patenting rejection. In addition, as explained in MPEP 804, a double patenting rejection should make clear (1) the differences between the inventions defined by the conflicting claims (ie., a claim in the patent compared to a claim in the application) and (2) the reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim at issue would have been an obvious variation of the invention defined in a claim in the patent. The Examiner has failed to conduct this analysis. Rather, the Examiner has flipped the analysis and is using the claims solely to provide a supplemental teaching of limitations. In other words, the claims of the '750 patent are being used as a secondary reference rather than a

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primary reference. For this reason as well, the rejection is improperly formulated and should be withdrawn.

Reconsideration and withdrawal of the rejection are respectfully requested.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

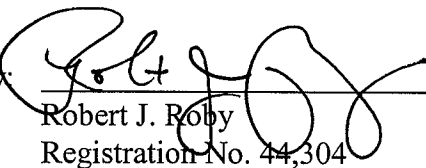
The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney in order to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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